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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,862	09/30/2003	William T. Ball	5564-153	6280
22442	7590	05/01/2007		
SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			EXAMINER FETSUGA, ROBERT M	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 05/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No. 10/674,862	Applicant(s) BALL, WILLIAM T.	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on March 13, 2007 & April 05, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12 and 15-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12 and 15-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "at least one protrusion" set forth in claims 20 and 26 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

2. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is unclear as to whether the "bathtub" is intended to be part of the claimed combination since structure of the "overflow assembly" is defined as being connected thereto (lns. 6-7), but no positive structural antecedent basis therefor has been defined.

Applicant states at page 10 of the response filed March 13, 2007 (duplicated April 05, 2007) the bathtub is not part of the claimed combination. The examiner acknowledges this, however, the actual claim language is inconsistent therewith as noted.

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 20-23 and 33-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Oropallo et al.

The Oropallo et al. (Oropallo) reference discloses an overflow system comprising: an overflow conduit/pipe 11 including a flange (at 12) and threads 22; a fastening member/nut 21 including a lug 24 and threads 23; a cap 10

including a flange 10a and a notch 50; and a closure device/member 40, as claimed.

Applicant argues at pages 10-11 of the response the Rule 131 declaration filed March 13, 2007 (duplicated April 05, 2007) removes Oropallo as a prior art reference. The examiner can not agree. The abandoned application serial no. 09/593,724, at best, serves as evidence of conception. And, a proper Rule 131 declaration must also include a showing of diligence. Applicant has not shown any diligence. See MPEP 2136.05. Moreover, the device depicted in 09/593,724 is different than the device illustrated and claimed in the instant application.

5. Claims 20-22 and 33-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Espey et al.

The Espey et al (Espey) reference discloses a conduit/pipe 12 including a flange (Fig. 3) and threads 13; a fastening member/nut 20 including a lug 21 and threads 31; and a cap 40 including a flange 41-46 and a notch (receiving 14), as claimed. The initial statement of intended use (overflow system, bathtub, etc.), and all other functional implications related thereto ("adapted to be positioned at least partially with in the bathtub", etc.), have been considered but do not appear to impose any patentably distinguishing structure over that disclosed by Espey.

Applicant argues at page 11 of the response Espey does not disclose the claimed lugs and frictional engagement. The examiner can not agree as the instant disclosure does not distinguish the structure defined by the claim wording from the structure disclosed by Espey. Both applicant and Espey teach a cap engaged to a nut.

6. Claims 20-22 and 33-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Gebert.

The Gebert reference discloses an overflow system comprising: an overflow conduit/pipe 1 including a flange 5 and threads 4; a fastening member/nut 8 including a lug 11 and threads (engaging 4); and a cap 14 including a flange (at 16) and a notch 15, as claimed.

Applicant argues at pages 11-12 of the response Gebert discloses a plate that receives the cap. The examiner agrees, and notes such subject matter clearly anticipates the broad claim language. In this regard, the nut 8 in Gebert "includes an outer periphery (10) with a radially extending lug (11)" (language of claim 21, numerals added).

7. Claims 23-25 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oropallo and Fritz et al.

Although the closure device/member of the Oropallo overflow system does not include a diaphragm, as claimed, attention is

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directed to the Fritz et al. (Fritz) reference which discloses an analogous overflow system which further includes a closure device/member in the form of a diaphragm 15. Therefore, in consideration of Fritz, it would have been obvious to one of ordinary skill in the closure device/member art to associate a diaphragm with the Oropallo overflow system in order to enable molding.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

8. Claims 26-31, 12 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oropallo and Lewis.

Although the duct (conduit/pipe) of the Oropallo overflow system does not include a fitting, as claimed, attention is directed to the Lewis reference (Fig. 4) which discloses an analogous overflow system which further includes a duct 19 having a fitting 41. Therefore, in consideration of Lewis, it would have been obvious to one of ordinary skill in the overflow system art to associate a fitting with the Oropallo duct in order to enable separate manufacture.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

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9. Claims 31, 32, 18 and 19 are rejected under 35

U.S.C. 103(a) as being unpatentable over Oropallo and Lewis as applied to claims 26 and 12 above, and further in view of Fritz.

To associate a diaphragm with the Oropallo overflow system would have been obvious to one of ordinary skill in the art in consideration of Fritz analogous to the discussion supra.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

10. Claims 23-25 and 37-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Gebert and Fritz.

To associate a diaphragm with the Gebert overflow system would have been obvious to one of ordinary skill in the art in consideration of Fritz analogous to the discussion supra.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

11. Claims 26-30, 12 and 15-17 are rejected under 35

U.S.C. 103(a) as being unpatentable over Gebert and Lewis.

To associate a fitting with the Gebert duct would have been obvious to one of ordinary skill in the art in consideration of Lewis analogous to the discussion supra.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

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12. Claims 31, 32, 18 and 19 are rejected under 35

U.S.C. 103(a) as being unpatentable over Gebert and Lewis as applied to claims 26 and 12 above, and further in view of Fritz.

To associate a diaphragm with the Gebert overflow system would have been obvious to one of ordinary skill in the art in consideration of Fritz analogous to the discussion supra.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

13. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

14. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

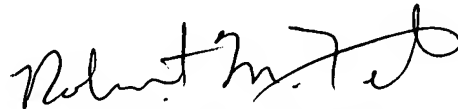
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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